

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Midwest Independent System Operator, Inc.

Docket No. ER04-106-000

ORDER CONDITIONALLY ACCEPTING PROPOSED FILING

(Issued December 29, 2003)

1. In this order, we conditionally accept the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to Attachment P of its Open Access Transmission Tariff (OATT), subject to further revisions to Attachment P, as described in the body of this order. This order benefits customers by maintaining an accurate and up-to-date listing of grandfathered agreements in the Midwest ISO's tariff.

I. The Filing

2. On October 30, 2003, Midwest ISO submitted proposed revisions to Attachment P (List of Grandfathered Agreements) of its OATT. Midwest ISO proposes to revise Attachment P to update the listing of grandfathered agreements for certain of its Transmission Owners. Midwest ISO states that the proposed revisions are being made to reflect: (1) the addition or deletion of certain grandfathered agreements; (2) updated termination provisions of certain grandfathered agreements; (3) corrected Rate Schedules of certain grandfathered agreements; and (4) a general clean-up of Attachment P.¹

3. Midwest ISO also states that it occasionally requests updated information concerning Attachment P from its Transmission Owners. The proposed revisions to Attachment P are the result of such efforts, and the Midwest ISO Transmission Owners have reviewed and consented to the proposed revisions to its Attachment P.

¹ "General clean-up" refers to changes which are not substantive in nature, but rather are either clerical, format changes, or incidental changes necessary to ensure document consistency.

Midwest ISO requests waiver of the Commission's 60-day notice period so that the proposed revisions can become effective on October 31, 2003.

II. Notices of Filings and Responses

4. Notice of Midwest ISO's proposed revisions was published in the Federal Register, (68 Fed. Reg. 64,883 (2003)), with comments, protests, and interventions due on or before November 20, 2003.

5. Wolverine Power Supply Cooperative, Inc.; Edison Sault Electric Company; Michigan Public Power Agency and the Michigan South Central Power Agency; Tenaska Power Services Company and Wisconsin Public Service Corporation; and Upper Peninsula Power Company filed timely motions to intervene.

6. Great River Energy, Dairyland Power Cooperative, Southern Minnesota Municipal Power Agency, and GEN~SYS Energy (collectively, Great River, et al.) jointly filed a timely motion to intervene, comments, and a request for certain clarifications. Corn Belt Power Cooperative (Corn Belt) and Midwest Municipal Transmission Group (MMTG) filed timely motions to intervene and protests. Midwest ISO filed an answer to the comments and protests. MMTG filed an answer to the Midwest ISO's answer. We will discuss these pleadings in more detail below.

III. Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practices and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, (18 C.F.R. §385(a)(2)(2003)), prohibits an answer to a protest and an answer to an answer, unless otherwise allowed by the decisional authority. Accordingly, we will not accept MMTG's answer. However, we will accept Midwest ISO's answer because it provided information that assisted us in our decision-making process.

Edison Sault's Comments

9. Edison Sault points out that in the proposed revisions to Attachment P the expiration date of its agreement with Cloverland Electric Cooperative (Cloverland) was mistakenly stated as December 31, 2002, whereas the correct date is December 31, 2003. Edison Sault therefore requests that the date be revised to reflect the correct expiration date of December 31, 2003.

10. In its answer, Midwest ISO agrees to correct the expiration date of Edison Sault's agreement with Cloverland to accurately reflect an expiration date of December 31, 2003.

11. Accordingly, we will require that Midwest ISO revise and resubmit the tariff sheet in Attachment P which lists the agreement between Edison Sault and Cloverland as agreed to in its above answer, within 30 days of the date of this order.

Corn Belt's Protest

12. Corn Belt protests that the filing does not include certain grandfathered agreements that assigned capacity, under the "Operating Agreement Neal 3 Transmission Agreement," to Corn Belt and certain members of the North Iowa Municipal Electric Cooperative Association (NIMECA). Corn Belt requests that Midwest ISO add these agreements to its list and that Corn Belt and NIMECA be designated as customers.

13. In its answer, Midwest ISO states it has met with representatives of Alliant Energy,² who are willing to engage in informal discussions and review any documentation concerning the Operating Agreement Neal 3 Transmission Agreement in order to determine if additional agreements should be included in Attachment P.

14. We direct Midwest ISO to include in the compliance filing directed herein either: (1) the status of the informal discussions regarding this agreement, or (2) revised tariff sheets, to the extent they are inaccurate or revised, as the result of discussions with customers.

MMTG's Protest

15. MMTG alleges that Attachment P contains numerous errors and omissions and lists contracts that may be incorrect and cannot be determined to be correct without additional information. MMTG expresses concerns that potential contract omissions may be misinterpreted. For example, the contract between Northern States Power Company (Northern States) and East Grand Forks should be revised to reflect that the contract is with East Grand Forks, Minnesota. MMTG also contends that the contracts govern the parties' rights and obligations, not the listing of explanations in

² Alliant Energy is the transmission owner within Midwest ISO's system and Corn Belt is the customer of Alliant Energy.

Attachment P.³ Finally, MMTG seeks clarification that the summaries provided in Attachment P represent abbreviated descriptions only, and not legally binding interpretations of the contracts.

16. MMTG further states that most of its members are in the TRANSLink footprint, and that the grandfathered contracts of these entities were fully considered and provided for in a settlement agreement approved by the Commission between MMTG and TRANSLink Development Corporation.⁴ MMTG maintains that this settlement provides for the appropriate treatment of grandfathered agreements. MMTG further maintains that once TRANSLink commences operations, then the settlement will establish the appropriate treatment of MMTG's contracts within the TRANSLink footprint. However, if TRANSLink does not become operational, MMTG believes the settlement represents the appropriate starting point for negotiations with Midwest ISO.

17. In addition, MMTG requests that action on this filing be suspended for 60 days to allow for negotiations, or in the alternative that settlement procedures be implemented. If resolution by these matters is not possible, MMTG requests that these matters be set for hearing.

18. In Midwest ISO's answer to MMTG's protest, Midwest ISO agrees that the contract between Northern States and East Grand Forks should be revised to accurately reflect that the contract is with East Grand Forks, Minnesota (not East Grand Forks, North Dakota). In addition, Midwest ISO agrees with certain commenters⁵ and will correct the cost settlement provisions of the Network Integration Transmission Service Agreement (NITS) between Central Minnesota Municipal Power Agency and Northern States to reflect that it is the rate moratorium that terminates on September 30, 2004, not the cost settlement that terminates on October 1, 2004. Midwest ISO agrees to do the same for the other NITS Agreement for Great River, et al. Finally, Midwest ISO disagrees with MMTG that it should accept a certain offer of settlement as a grandfathered agreement under Midwest ISO's Attachment P. Midwest ISO states that the offer of settlement does not meet the definition of the grandfathered agreement (agreements entered into on or before September 16, 1998). Moreover, regarding MMTG's concerns that the operation of TRANSLink would supercede the settlement agreement, Midwest ISO points out that

³ Citing United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

⁴ TRANSLink Development Corporation, 104 FERC ¶ 61,001 (2003).

⁵ Central Minnesota Municipal Power Agency is a MMTG member.

a recent announcement was made stating that activities regarding the formation of TRANSLink have been suspended and that TRANSLink Management Development Company will be dissolved by the end of 2003.

19. We direct Midwest ISO to revise and resubmit tariff sheets in accordance with its answer, as discussed above. We also grant MMTG's request for clarification that the summaries provided in Attachment P represent descriptions only, rather than service agreement amendments. Midwest ISO has filed proposed revisions to Attachment P pursuant to Section 205 of the Federal Power Act (FPA). Midwest ISO has not filed amendments to any service agreements. Service agreement amendments can only be filed and approved pursuant to Section 205 or Section 206. Midwest ISO has made no such filing here.

20. Further, with respect to MMTG's request that we expand the instant proceeding to include hearing and settlement procedures regarding its service agreements with TRANSLink, the Commission is declining to do so because such matters are outside the parameters of the instant tariff filing. Midwest ISO and parties are encouraged, nonetheless, to undertake negotiations of grandfathered service agreements, and thereby fulfill the joint objective of the Commission and Midwest ISO to have a fully functioning energy market in place for the Midwest.

Great River, et al.'s Comments and Request for Clarification

21. Great River, et al. expresses concerns that certain grandfathered agreements between Great River, et al. and Northern States and Interstate Power Company, who are Transmission-Owning members of the Midwest ISO, were omitted in Attachment P.⁶ Great River, et al. requests that Attachment P be revised to add these grandfathered agreements.

22. Great River, et al. requests clarification concerning grandfathered agreements listed in Attachment P. Great River, et al. states that the grandfathered agreements themselves, not Attachment P, set forth the legally binding obligations of the parties. Therefore, Great River, et al. requests clarification, in the event of conflict, that the terms of a grandfathered agreement control over the abbreviated description of the grandfathered agreements provided in Attachment P.

23. In its answer, the Midwest ISO clarifies that it is willing to include certain interconnection and interchange agreements, as Great River, et al. suggests, as well as the June 1, 1996 Settlement Agreement between Northern States and Southern

⁶ Northern States Power Company, a subsidiary of Xcel Energy Corporation and Interstate Power Company, a subsidiary of Alliant Energy Corporation.

Minnesota Municipal Power Agency, one of the Great River, et al. entities. However, Midwest ISO proposes to include such agreements only if the transmission-owning members, who are parties to such agreements, are agreeable to such inclusion. Midwest ISO also states that it agrees to work with Northern States and Alliant to determine whether to include these agreements in its Attachment P. Midwest ISO notes that all agreements listed in its Attachment P are provided by its transmission-owning members and it relies upon its transmission-owning members to provide accurate information with regards to Attachment P.

24. We direct Midwest ISO to file tariff sheets, including the agreements cited by Great River, et al., to the extent it determines that they meet the definition of grandfathered contracts. To the extent Midwest ISO does not include grandfathered contracts in Attachment P, we require Midwest ISO to provide an explanation for the omissions. Finally, we agree with Great River, et al., that the legally binding contract itself is the controlling agreement and not the abbreviated description in Attachment P.

The Commission orders:

(A) Midwest ISO's proposed revisions are hereby conditionally accepted, as discussed in the body of this order.

(B) Waiver of the sixty-day notice period is hereby granted to permit the tariff sheets to become effective on October 31, 2003, as proposed.

(C) Midwest ISO is hereby directed to refile revised tariff sheets within 30-days of the date of this order, as described in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.